

BEFORE THE MONTANA DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION

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IN THE MATTER OF THE PETITION OF MAXINE TURLEY	)	
FOR ADMINISTRATIVE CLOSURE OF STATE TRUST LANDS	)	DECISION
IN SECTION 36, TOWNSHIP 7 NORTH, RANGE 28 EAST, MPM	)	DENYING
IN MUSSELSHELL COUNTY, MONTANA TO RECREATIONAL	)	CLOSURE
ACCESS PURSUANT TO ARM 36.25.152.	)	
	)	

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**INTRODUCTION**

On May 31, 2012, the Southern Area Land Office received a written request from Maxine M. Turley, the former Lessee of State of Montana Agricultural & Grazing Lease 9984 within Section 36, Township 7 North, Range 28 East, MPM, requesting closure of this Section to public recreational use. The justification for closure asserted in the Petition was:

1. "Proximity of the state section in relation to our homesite."; and,
2. "Due to current homesite boundaries resulting in threat to their safety and privacy. "

Section 36, Township 7 North, Range 28 East, MPM also contains an 8.11-acre home site Lease that is located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of the Section. This State home site is currently leased to Turley Ranch, which is controlled by Michael Turley and Maxine M. Turley. A narrow strip of land between the home site and the section line of Section 36 provides public access to the remaining 632-acre State grazing parcel. This Section is one of the few parcels of public land in the Bull Mountains that offers to the public a comprehensive opportunity to hunt Deer, Elk, Turkey, and Antelope.

**PROCEDURAL HISTORY**

On Wednesday, May 30<sup>th</sup>, 2012 a public hearing was conducted at the EOC building located at 704 1<sup>st</sup> street in Roundup Montana. There were approximately twenty five members of the

public present. Also present were the Musselshell County Sheriff's shift supervisor, Harold Guse, Fish Wildlife and Parks Warden Captain, Gary Hammond FWP's Regional Manager, Lee Burroughs, FWP Warden, Roundup. The meeting was facilitated by Clive Rooney, DNRC's Northeast Area Manager and was recorded by John Grassy, the Public Affairs and Media Relations Director for the DNRC.

A general description of the area proposed for closure was given by the Department, and proponents of the closure were given an opportunity to present their case for closure. Following this, opponents of the closure were given an opportunity to present their case for keeping the area closed. Matt Wolcott, DNRC's Southern Land Office Area Manager spoke briefly about the current processes in place for determining recreational access and future management plans for the area. Both Proponents and Opponents were given an opportunity to make closing statements.

### **FINDINGS OF FACT**

There were 5 members of the public who provided written or oral testimony in support of the closure:

1. Mike Turley (on behalf of the Turley family)
2. David Turley
3. Brian Turley
4. Jeremy House
5. Gary Austin

There were 18 members of the public who provided written or oral testimony in opposition to the closure. Five people spoke in opposition to the requested closure at the hearing:

1. George Mingee
2. John Gibson / Public Lands Access Commission
3. Robert Allen

4. Tim Peterson
5. Tom Madden

Section 36, Township 7 North, Range 28 East, MPM contains an 8.11-acre home site Lease that is located within the SE¼SE¼ of the Section. This State home site is currently leased to Turley Ranch, which is controlled by Michael Turley and Maxine M. Turley. A narrow strip of land between the home site and the section line of Section 36 provides public access to the remaining 632-acre State grazing parcel. This Section is one of the few parcels of public land in the Bull Mountains that offers to the public full hunting opportunity for Deer, Elk, Turkey, and Antelope.

Although Maxine Turley made a verbal request to the Southern Land Office to close this section in March of 2012, a written Petition was not received by the Southern Land Office until May 31, 2012, after the date of the public hearing in this matter.

#### **ISSUES FOR RESOLUTION**

1. Did Maxine Turley's Petition for recreational closure adhere to the procedure required in ARM 36.25.152(3)(b)?
2. Does the Petition and the evidence presented at the hearing justify closure of this parcel to recreational access under any of the elements set out in ARM 36.25.152(1)?

#### **ANALYSIS**

##### **Did Maxine Turley's Petition for recreational closure adhere to the procedure required in ARM 36.25.152(3)(b)?**

ARM 36.25.152(3)(a), (b), and (c) provide that:

- (3) (a) Any person, corporation, organization, or agency of local, state, or federal government may petition to close a specific tract of land for any reason listed in (1).

(b) The petition must be submitted to the area or unit office in which the state land is located and must be in writing. To be considered during a calendar year, the petition must be submitted by April 1 of that year, be signed by the petitioner, and must contain the following information:

- (i) name, mailing address, and telephone number of petitioner;
- (ii) description of lands to which the petition applies by legal description, lease number, or other description of the location;
- (iii) the reason that the land should be closed and supporting documentation; and
- (iv) period for which closure is sought.

(c) The department may summarily dismiss a petition with a brief statement of the reason for the dismissal if:

- (i) the petition is not based on a reason for closure listed in (1) ;
- (ii) the petition is not supported by specific factual allegations, data, or documentation; or
- (iii) a petition requesting essentially the same closure has been rejected in the past 365 days unless changed conditions are alleged and documented.

(emphasis added.)

Maxine Turley failed to submit a written Petition for recreational closure for the above-described land by April 1<sup>st</sup>, 2012. Moreover, the Petition does not contain specific factual allegations, data, or documentation to support a recreational closure. Accordingly, this Petition does not comply with the procedural requirements for a site-specific recreational closure under ARM 36.25.152(3), and, thus, Maxine Turley's Petition for recreational closure must be dismissed and denied.

**Does the Petition and the evidence presented at the hearing justify closure of this parcel to recreational access under any of the elements set out in ARM 36.25.152(1)?**

ARM 36.25.152(1) and (2) describe the criteria for site-specific recreational closure of a tract of State trust land:

(1) The department may close specific tracts of state land pursuant to this rule after September 1, 1992, for any of the following reasons:

- (a) damage attributable to recreational use diminishes the income generating potential of the state lands;

- (b) damage to surface improvements of lessee or mineral lessee;
- (c) the presence of threatened, endangered, or sensitive species or plant communities;
- (d) the presence of unique or special natural or cultural features;
- (e) wildlife protection;
- (f) noxious weed control;
- (g) the presence of buildings, structures, or facilities;
- (h) protection of public safety;
- (i) prevention of significant environmental impact;
- (j) disruption of calving, lambing, or shipping activities or substantial disruption of livestock use;
- (k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land; or
- (l) comparable public general recreational use has been made available pursuant to (13) .

(2) Closures made pursuant to (1) may be of a seasonal, temporary, or permanent nature.

The presence of buildings and structures do not directly conflict with recreational or hunter use.

This tract of land does have a state leased home site within the borders of the grazing lease.

However, there is adequate room to allow the public to access and safely use the remainder of the state section. Similar configurations exist within the Southern Land Office Area such as the Jellison Road running through Section 36, Township 1 South, Range 25 East, MPM.

According to Section 77-1-203, MCA State trust lands must be managed according to multiple-use concepts. There are approximately 800 home and cabin sites present upon State trust lands. The Department has successfully coordinated and harmonized the recreational use of State lands with isolated in-holdings for home and cabin sites. The Department has reasonably accommodated the privacy needs of home and cabin site Lessees by categorically closing home and cabin site lease premises to public use under ARM 36.25.150(1)(a). Given the facts presented in the Petition and at the Public Hearing, it is unreasonable to assume that Michael and Maxine Turley should be provided a level of privacy that is greater than that of others living in close proximity to State trust lands.

Recreational use and hunter access to this Section of trust land does not pose an imminent threat to public safety or the safety of the residents of this home site. Geographic features at, and surrounding, the home site restrict the impacts of any negligent firearm discharge occurring on the remainder of this Section of land. The presence or use of firearms by the public on this parcel is no more dangerous than on any other parcel of state land. The Petitioner failed to present any documented evidence of a hunter or recreational user acting in a manner that posed a direct threat to the lessee's safety or welfare. The Petitioner failed to present any documented evidence of a public recreational user interfering with agricultural or ranching operations on the state grazing lease. To the contrary, testimony at the Public Hearing in this matter gave multiple documented examples of the former Lessee or their family interfering with public access and public recreational use of this State grazing lease.

The Petitioner has expressed concern for personal safety as a result of the remoteness of the section and as a result of potential public use. There is a county road that runs through the homesite that provides public access to the section. Even with a closure, the public will still have legal access to the parcel in question. Reasonable restrictions are in place to provide for both the Petitioner's safety and privacy. No evidence has been presented which warrants any need or justification for greater levels of privacy upon this parcel of State trust land.

Hunting and recreation use is currently present on over 320,000 acres of state managed public land within the land office. Agricultural, ranch, and farm use currently coexists on over 711 sections of public land within the land office area of responsibility. There has been no evidence to suggest that recreation and hunter access is detrimental to agriculture and grazing operations on public land.

Written and oral testimony was given by 6 members of the public stating that at one time or another the Lessee or her family confronted them and denied them public access to the state section. Multiple citations for hunter harassment have been given and there are court cases pending for three members of the Turley family for hunter harassment as a result of confrontations with public who were legally using the public lands adjacent to the homesite.

No evidence was presented in the Petition or in the Public Hearing on this matter to justify closure of this parcel to public recreational use under the criteria set out in ARM 36.25.152(1) and (2).

### **CONCLUSIONS OF LAW**

1. Maxine Turley failed to submit a written Petition for recreational closure for the above-described land by April 1<sup>st</sup>, 2012. Moreover, the Petition does not contain specific factual allegations, data, or documentation to support a recreational closure. Accordingly, this Petition does not comply with the procedural requirements for a site-specific recreational closure under ARM 36.25.152(3), and, thus, Maxine Turley's Petition for recreational closure must be dismissed and denied.

2. No adequate justification for recreational closure of the above-described State trust lands, as described by ARM 36.25.152(1) and (2), was presented either in the Petition, or at the public hearing on the Petition.

### DECISION

After a thorough review of the evidence presented in the Petition and at the Public Hearing , the above-described Petition is hereby dismissed and denied, and it is determined that Section 36, Township 7 North, Range 28 East, MPM, should remain open to public access and public recreational use, with the exception of those 8.11 acres of land covered by State of Montana Home Site Lease No. 9985 categorically closed to public use.

### NOTICE

Pursuant to ARM 36.25.152(9), this Administrative Decision may be appealed to the Department Director or her designee by filing a written appeal with the area office within 15 days of your receipt of this decision. The department shall give any opposing party notice of the appeal and the opportunity to respond, including the right to appeal at any appellate hearing. The appeal shall, in the discretion of the director, proceed by written argument, oral argument, or both, at the main office of the department in Helena or other location designated by the director. No party may submit evidence or information that was not submitted at the hearing. The director shall convene the recreational use advisory council and request it to recommend a decision on the appeal. The director or his designee shall, after receiving the recommendation of the council, issue a written decision affirming, reversing, or modifying the decision. The director's decision must be made on or before September 1. If the advisory council does not make a recommendation on or before August 25, the director need not consider its recommendation in making her decision.

DATED this 12 day of June, 2012.

By: Matthew Wilson



Matt Wolcott  
Southern Land Office Area Manager  
Montana DNRC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the fore-going DECISION DENYING CLOSURE was served by mail, postage prepaid, upon the following on the 13 day of June, 2012:

Michael Turley  
Maxine M. Turley  
Brian J. Turley  
Diane Molen  
Turley Ranch  
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